IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28-08-2007

CORAM:

THE HONBLE MR.JUSTICE M.CHOCKALINGAM

W.P.NO.8616 OF 2007
and
MP.Nos.2 and 3 OF 2007

M/s Manidhaneyam Charitable Trust
represented by its Managing Trustee
Thiru Sa.Duraisamy ... Petitioner

Vs.

1.The Government of Tamil Nadu
represented by its Secretary,
Revenue Department,
Fort St.George,
Chennai.

2. The Sub-Registrar,
Office of Sub-Registrar,
Velachery,
Chennai 600 042.

3. The Inspector General of Registration,
Registration Department,
Chennai 600 028. ... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamas as stated therein.

For petitioner : Mr.Philip George
For Respondent No.1 to 3 :Mr.N.Senthil Kumar
Additional Government Pleader

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O R D E R

The petitioner, a Charitable Trust represented by its Managing Trustee, has sought for a writ of Certiorarified mandamus to quash the notice issued by the second respondent on 18.9.2006 in Na.Ka.No.158/06 and also to direct the second respondent to return the document viz. gift deed registered on 10.07.2006 by giving effect to the remission as per G.O.1224/Revenue dated 25.4.1964 read with G.O.Ms.No.224/Commercial Taxes (J1)/dated 11.12.2003.

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2. The Court heard the learned counsel on either side.

3. The case of the petitioner, as could be seen from the affidavit filed in support of the petition and also after hearing the learned counsel for the petitioner, is that he is the Managing trustee of the trust in question, and the petitioner was registered vide the Deed of Declaration of Trust dated 24.1.2005. It is also registered as a Public Charitable Trust under Section 12AA of the Income Tax Act 1961 by the Director of Income Tax (Exemptions) vide his order No.DIT(E) No.2 (970)/ 04-05 dated 18.5.2005 and approved by the Director of Income Tax (Exemptions) under Section 80G of the Income Tax Act, 1961, vide his order No.DIT(E) No.2 (970)/04-05 dated 18.5.2005 for the period from 17.02.2005 to 31.03.2006. Further,the petitioner had filed an application for renewal of the approval under Section 80(G) before the Director of Income Tax (Exemptions) on 6.2.2006, well before the expiry of the approval and the same was also approved by the Director of Income Tax(Exemptions) for the period from 1.4.2006 to 31.03.2006 vide his order No.DIT(E) No.2(970)/ 04-05 dated 22.08.2006, that one Sa.Duraisamy, the sole and absolute owner of the property comprised in T.S.No.66/9 (Old S.No.33), Block No.20,Velachery Village, Mambalam-Guindy Taluk, Chennai District, measuring an extent of 40.70 cents, being 17,746 sq.ft. of land with the building measuring about 5457 sq.ft. built thereupon, has executed a gift deed on 10.07.2006 transferring the property to the petitioner. At the time when the deed of gift was placed for registration before the second respondent, the petitioner had claimed one half (50%) remission of stamp duty leviable on the above transaction of Gift in view of G.O.Ms.No.1224/Revenue dated 25.4.1964 read with G.O.Ms.No.224/Commercial Taxes(J1)/dated 11.12.2003. The second respondent had accepted the deed of gift dated 10.7.2006 and registered the same after payment of Rs.2,90,300/- along with Rs.45,250/- worth stamp paper, totally a sum of Rs.3,35,550/- towards stamp duty, being 50% of the stamp duty on the value of the property. The second respondent issued the impugned notice on 18.9.2006 demanding a sum of Rs.4,39,983/- being the remission of Stamp Duty claimed by the petitioner on the ground that the approval under Section 80G of Income Tax Act was granted subsequent to the registration of the Gift deed. The petitioner has also filed a petition dated 6.10.2006 before the third respondent praying for clarification in this regard and direction to the second respondent to return the gift deed dated 10.07.2006, by accepting the claim of the petitioner. But they have not passed any order thereon. Under compelled circumstances, the petitioner has filed the present writ petition before this Court.

4. The Court heard the learned counsel for the respondent.

5. It is not in controversy that the petitioner was registered as a Public Charitable Trust under Section 12AA of the Income Tax Act,1961 and it was also approved by the Director of Income Tax under Section 80G of the Income Tax Act by order dated 18.5.2005 for the period from 17.2.2005 to 31.3.2006. When the gift deed was executed by one

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Duraisamy in respect of the immovable property, the same was placed for registration on 10.7.2006 in the office of the second respondent, the petitioner had claimed one half (50%) remission of stamp duty leviable on the above transaction of Gift in view of the G.O.No.1224/Revenue dated 25.4.1964 read with G.O.N.224/Commercial Taxes (J1)/dated 11.12.2003, and also in view of the approval under Section 80G of the Income Tax Act. It is not in controversy that accepting the same, the document was registered as gift deed. Thereafter the impugned notice was served demanding a sum of Rs.4,33,983/- being the remission of stamp duty claimed by the petitioner. Aggrieved over the same, the petitioner had filed a petition before the third respondent on 6.10.2006, but the same was not considered by the third respondent. Hence, the above writ petition has been brought forth for the relief as stated above.

6. The petitioner has claimed remission of 50% stamp duty leviable on the above transaction of gift, in view of G.O.No.1224/Revenue dated 25.4.1964 along with G.O.224, Commercial Taxes(J1) dated 11.12.2003.

7. Item 47 of G.O.1224 dated 25.4.1964 reads as follows:

> All gifts or settlements for charitable or religious purposes-Duty reduced to one half of the duty leviable on such instruments (G.O.Ms.No.639, revenue dated 20th march, 1948 and G.O.Ms.No.2993, revenue dated 15th December, 1948)".

Provided that, the above gift will apply only in the case being society or trust approved under Section 80G of the Act, 1961 Central Act 43 of 1961. From the reading of the above G.O., it is abundantly clear that the remission of 50% of stamp duty is to be given, on the petitioner satisfying two conditions, firstly, the gift or settlement should be one for charitable or religious purpose, secondly, the said donee, society or trust should have been approved under Section 80G of the Income Tax Act 1861. In the instant case, it is not in controversy that the petitioner's society, a charitable trust, originally applied for benefits under Sections 80G of the Act and the same has been approved from 17.2.2005 to 31.3.2006. From the materials available on record, it is quite clear that renewal was applied even before 31.3.2006. It would clearly reveal that the renewal application was made as early as 6.2.2006 and renewal was also granted under Section 80G of the Income Tax Act from 1.4.2006 to 31.3.2009. It was also made clear in the order that the renewal was valid in respect of the donation received by the trust from 1.4.2006 to 31.3.2009. In the instant case, the document of gift was actually registered on 10.7.2006. When the document was registered, it has got to be examined under Section 80G of Act. Now the petitioner, on notice, was directed to make the above said payment as stamp duty only for the reason that the approval under Section 80G of the Act was granted subsequent to the Registration of the Gift deed. After looking into the materials available on record, this Court is of the considered opinion that the notice itself has been issued erroneously. Though the order of renewal was passed by the department on 27.7.2006 on an application made by the

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petitioner on 6.2.2006, it is made clear in the order itself that the renewal under Section 80G of the Act would have given effect from 1.4.2006 to 31.3.2009 and even this order has not been placed before the authority and the authority, having not looked into the order of exemption, issued notice, which in the opinion of the Court, is bad and invalid. In the instant case, once the petitioner was entitled to have remission of 50% of the stamp duty by the operation of the G.O., referred viz. G.O.Ms.No.1224 Revenue Dated 25.4.2004 and it was also had its approval on the relevant date, i.e., on 10.7.2005, without any hesitation, the above writ petition has got to be strictly ordered.

8. With the above observation, the writ petition is ordered. No costs. Consequently, MP.Nos.2 and 3 of 2007 is closed.

VJY

sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To
1. The Secretary,
   Revenue Department,
   Fort.St.George, Chennai.9.

2. The Sub Registrar,
   O/o sub registrar, Velachery,
   Chennai42.

3. The Inspector General of Registration,
   Registration Department, Chennai28.

4. The Section Officer,
   V.R.Section , High Court, Madras.
   (to sent the records immediately)

+ 1 cc to Mr.Philip George Advdocate SR.NO.53911

MS(CO)
RD 14.9.07

W.P.NO.8616 OF 2007
AND
M.P.NOs.2 and 3 OF 2007

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